

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
WIRELESS CABLE OF FLORIDA, INC.)	File No. BPMD-9158442
)	
For Authority to Construct and Operate a)	
Multichannel Multipoint Distribution Service)	
Station On the F Group Channels, Sarasota, Florida)	
)	

ORDER ON FURTHER RECONSIDERATION

Adopted: April 9, 2004

Released: April 12, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Further Reconsideration*, we address a petition for reconsideration filed on September 17, 2001, by WCG, Inc. (WCG).¹ WCG seeks reconsideration of the denial by former Mass Media Bureau's Video Services Division of Wireless Cable of Florida, Inc.'s (WCF) February 21, 1992, reconsideration petition regarding authority to construct a Multichannel Multipoint Distribution Service (MMDS) station at Sarasota, Florida.² For the reasons stated below, we deny the Petition.

2. *Background.* On March 18, 1991, WCF filed the above referenced application requesting authority to construct an MMDS station utilizing the F Group channels to serve Sarasota, Florida. On January 22, 1992, the former Common Carrier Bureau returned WCF's application as unacceptable for filing. On February 21, 1992, WCF filed a petition for reconsideration petition along with an amended application.³ Upon review of the revised application, the former Common Carrier Bureau determined that the revised application was defective because it was not in compliance with our rules regarding service of interference studies to all potentially affected parties.⁴ This defect was brought to the attention of WCF by way of a Commission letter dated July 5, 1994.⁵ The letter contained instructions on what WCF was to do to cure the application's defect.⁶

¹ Petition for Reconsideration (filed Sept. 17, 2001) (Second Petition). On July 9, 1999, Wireless Cable of Florida, Inc. amended its above-captioned application to reflect the *pro forma* change in the applicant to WCG, Inc., a newly created corporation, the shareholders, officers and directors of which were identical to those of WCF. Second Petition at 1 n.2.

² This reconsideration petition was initially granted on October 24, 1997 and the subject application of WCF reinstated. See Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau to Robert J. Rini (dated Oct. 24, 1997).

³ File No. BPMD-9158442.

⁴ See 47 C.F.R. § 21.902(g) and (i).

⁵ See Letter from Robert James, Chief, Domestic Radio Branch, Domestic Facilities Division, Common Carrier Bureau to James S. Blitz (dated Jul. 5, 1994).

⁶ *Id.*

3. On October 24, 1997, the Video Services Division granted WCF's reconsideration petition and reinstated its revised application *nunc pro tunc*.⁷ This reinstatement was granted after the revised application of WCF was supplemented with the proper service notices as required by Sections 21.902(g) and (i) of the Commission's rules.⁸

4. On November 24, 1997, Paradise Cable Inc. (Paradise), the former licensee of MDS Station WMI303, Sarasota, Florida, filed a petition for reconsideration of the reinstatement of WCF's application.⁹ On November 28, 1997, Paradise filed a petition to deny WCF's reinstated application.¹⁰ On October 6, 1999, the former Mass Media Bureau granted consent to the assignment of Station WMI303 from Paradise to Inforum Communications, Inc. (Inforum).¹¹ On August 22, 2001, the former Video Services Division of the Mass Media Bureau granted Paradise's petition for reconsideration and dismissed WCF's application because it was predicted to cause interference to Station WMI303.¹² WCG filed the Second Petition on September 17, 2001.¹³

5. *Discussion.* In the Second Petition, WCG argues that its application should be reinstated because it now has Inforum's consent to the reinstatement and grant of its application.¹⁴ WCG provides a declaration from Inforum's President and Chief Executive Officer Jeff Mathias, consenting to the reinstatement and grant of the WCF application.¹⁵ WCG notes that Inforum is the current licensee of Station WMI303, whose petition resulted in the dismissal of the above captioned application.¹⁶ Now that WCG has obtained Inforum's consent, WCG concludes we should reinstate the subject application.¹⁷

6. We note, however, that WCG does not challenge the Division's August 22, 2001 ruling that its proposed operation would cause interference to Station WMI303. Section 1.106 of the Commission's Rules requires petitions to cite the findings of fact and/or conclusions of law which the petitioner believes are erroneous, and state with particularity the respects in which such findings and conclusions should be

⁷ See Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau to Robert J. Rini, Esq., counsel to Wireless Cable of Florida Inc. (dated Oct. 24, 1997).

⁸ See 47 C.F.R. §§ 21.902(g) and (i).

⁹ Petition for Reconsideration (filed Nov. 24, 1997).

¹⁰ Petition to Deny (filed Nov. 28, 1997). The November 24 and 28 petitions will be referred to as the "1997 Petitions." WCF filed a consolidated opposition to the 1997 Petitions on March 17, 1998, to which Paradise replied on June 12, 1998.

¹¹ File No.BMDAL-990709XV (filed Jul. 9, 1999). See Public Notice, Report No. 115 (Oct. 6, 1999). The assignment was consummated on or about November 7, 2000. See Inforum Communications Inc., *et al.*, *Memorandum Opinion and Order*, 18 FCC Rcd 18508 (WTB PSPWD 2003), *app. for review pending*.

¹² See Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau to Paradise Cable, Inc., Wireless Cable of Florida Inc. and Inforum Communications, Inc. (dated Aug. 22, 2001).

¹³ See Second Petition. Paradise filed an opposition on October 2, 2001. Opposition to Petition for Reconsideration (filed Oct. 2, 2001). On October 9, 2001, WCG filed a request of an extension of time until Oct. 22, 2001, to respond to Paradise's opposition. Motion for Extension of Time (filed Oct. 9, 2001). We find good cause for that motion and grant the motion. 47 C.F.R. § 1.46(a). WCG filed a reply on October 22, 2001. Reply to Opposition to Petition for Reconsideration (filed Oct. 22, 2001). Paradise filed a "Motion to Accept Rebuttal Pleading" and "Rebuttal" on November 19, 2001. We deny the "Motion to Accept Rebuttal Pleading" because the Rebuttal addresses issues that are not pertinent to our decision in this proceeding.

¹⁴ See Second Petition at 2.

¹⁵ See Second Petition at 2, Exhibit B.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

changed.¹⁸ WCG provides no basis on which to conclude that the dismissal of its application was improper. Consequently, we find that WCG has failed the threshold requirement to obtain reconsideration.

7. We nonetheless note that WCG contends that we should reinstate and grant its application because it has now obtained consent from Inforum. We disagree. The Commission has recently affirmed that consent letters must be filed with the original application because “[c]onsidering consent letters that did not exist at the time the original application was filed encourages the filing of incomplete applications and places an undue burden on the Commission’s limited resources.”¹⁹ Section 1.106(c) of the Commission’s Rules provides that we will accept a petition for reconsideration relying on facts not previously presented to the Commission only in one of three circumstances: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters;²⁰ (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity;²¹ or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.²² In this case, we find that none of these circumstances is present. We find it significant that WCG did not submit the consent letter until over ten years after WCF filed its application and almost a year after Inforum became the licensee of Station WMI303. Accordingly, we conclude that Section 1.106(c)(1) of the Commission’s Rules is therefore not applicable.

8. For the reasons discussed herein, we conclude that WCG has failed to meet the standard for reconsideration. We therefore deny WCG’s Petition.

9. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by WCG, Inc. on September 17, 2001 IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁸ See Mike Gruss, *Order on Reconsideration*, 17 FCC Rcd 466 ¶ 3 (WTB PSPWD 2002); Federal Express Corporation, *Order*, 15 FCC Rcd 4289, 4293 n.40 (WTB PSPWD 2000). 47 C.F.R. § 1.106(d)(1).

¹⁹ See Educational Television Association of Metropolitan Cleveland, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 15117, 15120 (2003).

²⁰ 47 C.F.R. § 1.106(c)(1)(i).

²¹ 47 C.F.R. § 1.106(c)(1)(ii).

²² 47 C.F.R. § 1.106(c)(2).